

FILED

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DEC 15 2009

Frederick Banks,  
Plaintiff,v.  
Ronald W. Hayward, Esq., et al.;  
Paramount Correctional Services, et al.;  
Defendants.CLERK U.S. DISTRICT COURT  
WEST. DIST. OF PENNSYLVANIA

Civil Action No. 06-509

06-1424

Judge Gary L. Lancaster  
Chief Magistrate Judge Amy  
Reynolds Hay

Renewed Motion To Vacate PLRA Orders; AND  
Brief in Support of Motion; AND Declaration for  
Full Refund; AND notice of Appeal

Frederick Banks, the Plaintiff ("Banks") hereby moves this honorable court to vacate the orders finding that he is subject to the filing fee under the prison litigation reform Act ("PLRA") and to grant a full refund. In the orders dated December 2, 2009, the Court stated that "As concerns his request to vacate the order requiring him to pay the filing fee in the first instance, Plaintiff has not provided the Court with supporting authority." Banks now provides the supporting authority requested by the Court. Banks cannot afford to pay the fees.

Banks also hereby notifies the court and the parties that he appeals the order of Court entered on or about December 2, 2009 to the District Judge of the United States District Court for the Western District of Pennsylvania.

Brief and Declaration

1. Frederick Banks hereby deposes under perjury and state as follows; I previously moved the Court to vacate the PLRA order. The Court ~~denied my request for additional authority~~. I hereby renew my request providing authority of my exemption from the PLRA fee.
2. I am an American Indian and the Federal Bureau of Prisons ("Bop"), a government agency recognizes and classifies me as an American Indian.
3. As an Indian I am exempt from the PLRA filing fee pursuant to 8 USC § 1401(b) which states "the following shall be nationals and citizens of the United States at birth: (b) a person born in the United States to a member of an Indian... or other aboriginal tribe provided, that the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property. My rights to my money property are being affected by the PLRA fee because the Bop has a freeze/encumbrance on my inmate account.

due to the fee I'm made to pay to this Court for the filing of these cases in violation of 8 USC §1401(b) and my Fifth Amendment Right to Due Process. See Burns v. Pennsylvania Dept of Corrections, 544 F.3d 279 (3rd Cir. 2008) (holding that hen on prisoner's account triggers due process protection).

4. Accordingly, I have met at least one of the three exceptions to the general rule that a statute of general applicability applies to Indians. *Donovan v. Coeur d' Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1995) (citing *Farms* 624 F.2d at 893-94 "There are three exceptions to this principle. A federal statute of general applicability that is silent on the issue of applicability to Indians[] will not apply to them if... (3) there is great 'by legislative history' or some other means that Congress intended [the Law] not to apply to Indians..."). In any of these three situations, "Congress must expressly apply a statute to Indians before we will hold that it reaches them.") 28 USC § 1915 does not mention the word "Indians." Thus, I am exempt from the statute pursuant to 8 USC § 1401(b). See *ELK v. Wilkins*, 112 US 94, 100 (1884) ("General Acts of Congress do not apply to Indians, unless so expressed as to clearly manifest an intention to include them. • *U.S. Constitution*, art 1, sec 2, 8; *Cherokee Nation v. Georgia*, 5 pet 1; *Worcester v. GA*, 6 Pet 515; *US v. Rogers*, 4 How 567; *US v. Holliday*, 3 Wall 407; *The Kansas Indians*, 5 Wall 737; *The New York Indians*, 5 Wall 761; *The Cherokee Tobacco*, 11 Wall 616; *US v. Whiskey*, 93 US 188; *Pennock v. Corras*, 103 US 44; *Crow Dog's Case*, 109 US 556; *Giddell v. Jackson*, 20 Johns 693; *Hawkins v. Farmer*, 4 N.Y. 293. See also *Lewellyn v. Colonial Trust Co.*, 17 F.2d 36, 38 (3d Cir. 1927) (citing *ELK* and *United States v. Pickett*, 188 US 432); *McCandless v. United States*, 25 F.2d 71 (3d Cir. 1928); *Luzone v. Commissioner*, 11 F.3d 1180, 1187 (3d Cir. 1993).

5. I therefore urge the Court to vacate the order that I am subject to the filing fee because 28 USC § 1915 does not apply to an American Indian for the reasons cited above and the statute as applied is unconstitutional and in violation of the First Amendment and the other Constitutional provisions mentioned. The hen on Banks' prisoner account subjects him to an added punishment in violation of the Eighth Amendment and Fifth Amendment due process clause. Banks agreed to pay the fee, he did not agree to have his inmate account encumbered or a hen placed on his inmate account. These restrictions violate the contract he signed with the Court and are a constructive breach of that contract. Banks notes that he has not received any receipt from the Clerk of Court relating to the fees paid he requires a current financial receipt from the Court.

WHEREFORE, the foregoing motion should be granted. The Court should vacate its PLRA order and declare 28 USC § 1915 unconstitutional as applied. Banks should be issued a full refund. The Court should order the Clerk to forward the refund to: Federal Bureau of Prisons, Frederick Banks # 05711-068, PO Box 424701, DCS Mound, IA

(the Clerk should put my name and # 25711-068 on the check and envelope etc.).  
Finally, the Court should order the B&P to immediately lift the freeze on my marine  
account and remove the lien/encumbrance.

Respectfully submitted,

SD  
Frederick Banks  
#25711-068, 1BL  
P.O. Box 5000  
Yazoo City, MS 39194

PLAINTIFF

Certificate of Service

I hereby certify that on this 8th day of December, 2009, I served a true and  
correct copy of the foregoing "Ex parte upon the following by mail delivery:

Robert J. Barth, Jr., Clerk  
U.S. District Court  
P.O. Box 1805  
Pittsburgh, PA 15230

SD  
Frederick Banks

AND NOW, THIS 18 <sup>th</sup> DAY OF  
Dec 09, IT IS HEREBY  
ORDERED THAT THE WITHIN  
MOTION IS DENIED.

Gary L. Lancaster  
GARY L. LANCASTER,  
CHIEF UNITED STATES DISTRICT JUDGE

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